

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1610 - SB 1898

February 24, 2020

SUMMARY OF BILL: Authorizes counties to hold referendum elections to approve the growing, processing, manufacture, delivery, and sale of marijuana within any approving county.

Such referendum may take place by either the adoption of a resolution by a majority vote of a local legislative body or by filing a petition with such legislative body with the signatures of at least 10 percent of the qualified voters in any such county. Any such election may be held during a special or general election; however, only one referendum may take place within any 24-month cycle.

In any approving county, a person or entity would be authorized to operate a marijuana-related business. The sale of marijuana is to be taxed at the state rate of 7 percent and local option rate of up to 2.75 percent.

ESTIMATED FISCAL IMPACT:

**Increase State Revenue - \$779,200/FY21-22/General Fund
\$1,934,500/FY22-23/General Fund
\$3,863,100/FY23-24 and Subsequent Years/General Fund**

**\$200/FY21-22/Department of State
\$100/FY22-23/Department of State**

Decrease State Expenditures – \$893,700 Incarceration*

**Increase Local Revenue – \$750,319/FY21-22/Permissive
\$1,875,800/FY22-23/Permissive
\$3,751,600/FY23-24 and Subsequent
Years/Permissive**

Decrease Local Revenue - \$467,300/FY20-21 and Subsequent Years

**Increase Local Expenditures – \$505,000/FY21-22/Permissive
\$1,250,000/FY22-23/Permissive
\$2,500,000/FY23-24 and Subsequent
Years/Permissive**

**Decrease Local Expenditures –
\$1,794,200/FY20-21 and Subsequent Years/Incarceration**

Assumptions:

State and Local - Incarceration

- The proposed legislation will reduce convictions for simple possession involving an amount of marijuana less than one-half ounce.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 1,869 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of 18,690 convictions ($1,869 / 10\% = 18,690$) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-418.
- The potential punishment for a Class A misdemeanor is up to 11 months, 29 days in jail, a fine up to \$2,500, or both.
- This analysis estimates that 10 percent, or 1,869 ($18,690 \times 10\%$) offenders, currently pay an average \$250 fine for simple possession.
- The proposed legislation will result in a recurring mandatory decrease of local revenue estimated to be \$467,250 ($1,869 \times \250), beginning in FY20-21.
- This analysis assumes 10 percent of offenders are spending an average of 15 days in local jail for Class A misdemeanor convictions of Tenn. Code Ann. § 39-17-418.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- The proposed legislation will lead to a recurring mandatory decrease in local incarceration expenditures estimated to be \$1,794,240 ($\$64 \times 1,869 \text{ offenders} \times 15 \text{ days}$), beginning in FY20-21.
- Pursuant to Tenn. Code Ann. § 39-17-417(g)(1), one commits a Class E felony for manufacturing, delivering, selling, or possessing marijuana with intent to manufacture, deliver, or sell in an amount between one-half ounce and 10 pounds. The proposed legislation will result in fewer Class E felony admissions.
- Based on information provided by the Department of Correction (DOC), there has been an average of 239.5 admissions statewide per year for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and 10 pounds.
- This analysis assumes offenders imprisoned for possession of marijuana possessed a substantial amount of marijuana, which likely exceeded one ounce. It is assumed that the proposed legislation will reduce these admissions by 10 percent ($239.5 \text{ admissions} \times 10\% = 24 \text{ admissions}$).
- The average time served for a Class E felony is 1.35 years (493.09 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2018 is \$75.52.
- In FY20-21 and subsequent years, the proposed legislation will decrease recurring state incarceration costs by \$893,716 ($24 \text{ admissions} \times 493.09 \text{ days} \times \75.52).
- A decrease in the number of misdemeanor cases for multiple cannabis offenses listed under Tenn. Code Ann. Title 39, Chapter 17, will result in a decrease in state and local court costs. It is assumed that any such decrease will have a nominal impact on employment within such courts. Any decrease in court costs is estimated to be offset by a reduction in fee revenue received from individuals convicted and required to pay court costs and other necessary fees.

- The proposed legislation will not reduce the courts', district attorneys', or public defenders' caseloads enough to require a reduction in workforce.

Tax Revenue

A) Sales Tax

- It is assumed that only the six most populous counties will hold referendums and approve the sale of marijuana in their jurisdictions; however, this will not prevent residents from other Tennessee counties and states, including, but not limited, to tourists, who seek to purchase marijuana legally.
- The current state sales tax rate is 7.0 percent; for the purposes of this analysis, the local option sales tax rate of the 6 most populous counties, is assumed to be 2.25 percent. The effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- Sales of marijuana will not be subject to any other tax.
- Due to the effective date of this legislation, July 1, 2020, counties which approve the sale of marijuana will not be prepared to allow sales until FY21-22.
- The following are the estimated statewide sales per fiscal year:
 - FY21-22: \$10,000,000;
 - FY22-23: \$25,000,000;
 - FY23-24 and subsequent years: Exceeds \$50,000,000.
- The increase in state sales tax collections in FY21-22 is estimated to be \$674,681 $[(\$10,000,000 \times 7.0\%) - (\$10,000,000 \times 7.0\% \times 3.617\%)]$.
- The increase in local sales tax collections in FY21-22 is estimated to be \$250,319 $[(\$10,000,000 \times 2.25\%) + (\$10,000,000 \times 7.0\% \times 3.617\%)]$.
- The increase in state sales tax collections in FY22-23 is estimated to be \$1,686,702 $[(\$25,000,000 \times 7.0\%) - (\$25,000,000 \times 7.0\% \times 3.617\%)]$.
- The increase in local sales tax collections in FY22-23 is estimated to be \$625,798 $[(\$25,000,000 \times 2.25\%) + (\$25,000,000 \times 7.0\% \times 3.617\%)]$.
- The recurring increase in state sales tax collections in FY23-24 and subsequent years is estimated to exceed \$3,373,405 $[(\$50,000,000 \times 7.0\%) - (\$50,000,000 \times 7.0\% \times 3.617\%)]$.
- The recurring increase in local sales tax collections in FY23-24 and subsequent years is estimated to exceed \$1,251,595 $[(\$50,000,000 \times 2.25\%) + (\$50,000,000 \times 7.0\% \times 3.617\%)]$.

B) Excise and Franchise Tax

- Retail sales of medical cannabis per fiscal year:
 - FY21-22: \$10,000,000;
 - FY22-23: \$25,000,000;
 - FY23-24 and subsequent years: Exceeds \$50,000,000.
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent.

- In FY21-22, the net profit on which excise tax would be paid is \$1,500,000 ($\$10,000,000 \times 15\%$). The state excise tax rate is 6.5 percent, so the increase in state revenue attributable to excise tax collections will be \$97,500 ($\$1,500,000 \times 6.5\%$).
- Net worth of these companies is estimated to be equivalent to annual sales.
- The franchise tax rate is 0.25 percent per \$100 of value.
- In FY21-22, the increase in state revenue attributable to franchise tax collections will be \$250 [$(\$10,000,000 / \$100) \times 0.25\%$].
- In FY22-23, the net profit on which excise tax would be paid is \$3,750,000 ($\$25,000,000 \times 15\%$). The increase in state revenue attributable to excise tax collections will be \$243,750 ($\$3,750,000 \times 6.5\%$).
- In FY22-23, the increase in state revenue attributable to franchise tax collections will be \$625 [$(\$25,000,000 / \$100) \times 0.25\%$].
- In FY23-24 and subsequent years, the net profit on which excise tax would be paid is \$7,500,000 ($\$50,000,000 \times 15\%$). The increase in state revenue attributable to excise tax collections will be \$487,500 ($\$7,500,000 \times 6.5\%$).
- In FY23-24 and subsequent years, the increase in state revenue attributable to franchise tax collections will be \$1,250 [$(\$50,000,000 / \$100) \times 0.25\%$].

Revenue - Licenses

- Licenses will be sold in each of the six most populous counties, which, for the purpose of this analysis, will hold and approve referendums for the sale of marijuana.
- Licenses will be sold in FY20-21 and license revenue be attributed to FY21-22, the first fiscal year in which marijuana sales will take place.
- The number of licenses that will be issued in such counties is unknown.
- The fee schedule adopted by each county is unknown.
- For purposes of this analysis, statewide fee revenue will be equal to five percent of the estimated sales of marijuana per year.
- Statewide increase in local fee revenue per fiscal year:
 - FY21-22: \$500,000 ($\$10,000,000 \times 5\%$);
 - FY22-23: \$1,250,000 ($\$25,000,000 \times 5\%$);
 - FY23-24 and subsequent years: \$2,500,000 ($\$50,000,000 \times 5\%$).

Revenue - Business Charters

- All marijuana-related businesses will be required to file a business charter with the Secretary of State's Office.
- The number of marijuana-related businesses that will open in the six most populous counties is unknown.
- For the purpose of this fiscal analysis, the following charter filings for marijuana-related businesses by fiscal year:
 - FY21-22: 70 filings;
 - FY22-23: 35 filings;
 - FY23-24 and subsequent years: 10 filings.
- The business charter fee is one-time at \$100.

- For purposes of this analysis, the following charter fee revenue is estimated by fiscal year:
 - FY21-22: \$7,000 (70 x \$100);
 - FY22-23: \$3,500 (35 x \$100);
 - FY23-24 and subsequent years: \$1,000 (10 x \$100).
- Revenue from charter fees is allocated 97 percent to the General Fund, and 3 percent to the Secretary of State's Office.
- The increase in revenue to the General Fund is estimated to be \$6,790 in FY21-22 (\$7,000 x 97%); \$3,395 in FY22-23 (\$3,500 x 97%); and \$970 in FY23-24 and subsequent years (\$1,000 x 97%).
- The increase in revenue to the Secretary of State's Office is estimated to be \$210 in FY21-22 (\$7,000 x 3%); \$105 in FY22-23 (\$3,500 x 3%); and \$30 in FY23-24 and subsequent years (\$1,000 x 3%).

Expenditures – Local Administration

- There will be an increase in local expenditures to administer the marijuana licensing programs.
- Expenditures will include, but not be limited to, additional positions, travel expenses, and computer costs.
- For purposes of this analysis, it is assumed that the increase in local expenditures will equal that of estimated license fee revenue collected per year.
- Statewide increase in local expenditures per fiscal year:
 - FY21-22: \$500,000;
 - FY22-23: \$1,250,000;
 - FY23-24 and subsequent years: \$2,500,000.

Expenditures – Referendums

- It is assumed that all referendums held in conjunction with this legislation will take place during general elections held in each affected county.
- Under current law, pursuant to Tenn. Code Ann. § 2-2-111, the county election commission shall publish, in a newspaper of general circulation, a notice of all elections as well as elections on questions.
- Based on survey of county election commission provided by the Division of Elections, providing notice of the advisory question to voters will result in a one-time mandatory increase in local expenditures of approximately \$5,000.

Total Impacts

General Fund

- An increase in state revenue in FY21-22 of \$779,221 (\$674,681 + \$97,500 + \$250 + \$6,790).
- An increase in state revenue in FY22-23 of \$1,934,472 (\$1,686,702 + \$243,750 + \$625 + \$3,395).

- An increase in state revenue in FY23-24 and subsequent years of \$3,863,125 (\$3,373,405 + \$487,500 + \$1,250 + \$970).

Secretary of State's Office

- An increase in state revenue in FY21-22 of \$210.
- An increase in state revenue in FY22-23 of \$105.
- An increase in state revenue in FY23-24 and subsequent years of \$30.

Incarceration

- A recurring decrease in state expenditures of \$893,716 in FY20-21 and subsequent years.

Local Government

- A decrease in local revenue in FY20-21 and subsequent years of \$467,250.
- A decrease in local expenditures in FY20-21 and subsequent years of \$1,794,240.
- An increase in permissive local revenue in FY21-22 of \$750,319 (\$250,319 + \$500,000).
- An increase in permissive local expenditures in FY21-22 of \$505,000 (\$5,000 + \$500,000).
- An increase in permissive local revenue in FY22-23 of \$1,875,798 (\$625,798 + \$1,250,000).
- An increase in permissive local expenditures in FY22-23 of \$1,250,000.
- An increase in permissive local revenue in FY23-24 and subsequent years of \$3,751,596 (\$1,251,596 + \$2,500,000).
- An increase in permissive local expenditures in FY23-24 and subsequent years of \$2,500,000.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/jdb